

**UNDERSTANDING THE POLICY
ENVIRONMENT FOR INVESTORS**

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**THE FOREIGN DIRECT INVESTMENT ENVIRONMENT
AND POLICIES OF VIETNAM**

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Distinguished Guests,
Ladies and Gentlemen,

I would like to express my sincere thanks to the Ministry of Industry and the Board of Organisation who has extended me this opportunity to take the floor in this important APEC seminar on “Enhancing the Electric and Coal Development in Vietnam”.

In my speech today, I wish to present some basic issues on “the legal environment on the Foreign Direct Investment in Vietnam” especially our new policies promulgated in the Law on the Amendment of and Addition to the Law on Foreign Investment in Vietnam in June, 2000 and concretised in the Decree No 24/2000/ND-CP of the Government of Vietnam and Circular 12/2000/TT-BKH of the Ministry of Planning and Investment.

1. Referring to the investment forms:

In accordance to the legal provisions, The investors are eligible to invest in Vietnam in 3 forms, these are business co-operation contract, joint venture and wholly foreign owned enterprises in which joint venture and wholly foreign owned enterprises are formed up under the form of a limited liability company. These forms of investment and enterprise organisation have been stipulated in the Foreign Investment Law and kept stable since 1987. Along with provisions on the investment forms, the process of formulation and perfection of the foreign investment law has been constantly supplemented with new modes of investment such as construction of infrastructure of export processing zone, industrial zone and high tech park; investment under forms of BOT, BTO and BT since 1992.

Under new circumstance and in order to create favourable conditions to foreign investors make their investment under the form of business co-operation contract (BCC), the Decree of the Government has supplemented a new provision allowing foreign side to a business co-operation contract settling up its management office for implementing its business activities in compliance with the foreign side's rights and obligations provided for in a business co-operation contract and in the investment license. The management office is permitted to have its own seal, account and to recruit labour and to sign its business contracts.

2. On the investment encouragement and guarantee

Issuing the list of investment orientation and providing the autonomy of the investor in making choices in the investment opportunities on the basis of inheritance and further development lists of projects attached to the Decree No 10/1998/ND-CP, The Decree of

the Government has enacted 5 lists providing on the specially encouraged and encouraged projects; investment encouraged areas, the conditional and prohibited investment sectors. These lists could be amended dependent on the periodic master plan and the direction of the national socio-economic development.

Besides, the Law on Amendment of and Addition to the Law on Foreign Investment and the Decree 24/2000/ND-CP have reaffirmed the rights of investors in their actively making choices in investment projects, their partners, forms and the team of investment, the location, percentage of the legal capital contribution, market for product distribution conforming with the provisions of the Law and Decree.

- ◆ **Provisions on fiscal incentives**, especially tax rates and the term of exemption and reduction of the corporate income tax, the regime of exemption from import duties on machinery and equipment for forming up fixed assets. Especially the Law on Amendment of and Addition to the Law on Foreign Direct Investment in Vietnam in June, 2000 has just supplemented some provisions on the exemption from import duties on machinery and equipment, means of transportation and building materials which have not yet been domestically produced; the incentives on the import duties granted to projects in regions where investment is encouraged have been broadened; reduction of withholding tax rates; the wholly foreign owned enterprises and the foreign party to BCC are permitted to have their losses carried forward as currently prescribed in current provisions applicable to joint venture enterprises.

Together with tax incentives, the Foreign Investment Law has further open the fiscal regime applicable to enterprises. The Amendment Law on the Foreign Investment Law in June 2000 has eliminated the provision on the obligatory setting up the reserve fund and expanded the scope of enterprises eligible to losses carry forward applicable to the wholly foreign owned enterprises and the foreign party to business co-operation contracts.

- ◆ **Provision on land and land rental incentives** especially applicable to projects under the list of sectors and areas where investment is encouraged. Besides, in order to overcome the circumstances of delayed realisation of projects caused by obstacles in land clearance and compensation, the Amendment Law to the Foreign Investment Law has concretely identified the responsibilities in site clearance and compensation of the Vietnamese side (in case of its capital contribution by land use rights) and of the Provincial People's Committees (in case of land lease). Along with the Law, Decree No 24/2000/ND-CP and Circular 12/2000/BKH-QLDA continues to concretely provide on this issue and in the investment capital or agreed by parties. Those provisions shall significantly furnish in pushing up the process of project realisation post investment licensing.
- ◆ **Provisions on the foreign exchange, opening of bank account and the Government guarantee and assurance on foreign exchange balance** for satisfying the requirements on foreign currencies and international transactions of foreign invested enterprises. Particularly, in the Amendment Law to the Foreign Investment

Law has provided new stipulations aiming at removing obstacles and difficulties and minimising risks in the operations of foreign invested enterprises in which the most importance are allowing foreign invested enterprises to buy foreign currencies at commercial banks to meet their demand of current transactions and other permitted transactions; enhancing measures to ensure the foreign currency balancing to a number of specially important projects; creating favourable conditions for opening of bank account overseas and mortgage of the value of the land use right of enterprises at financial institutions permitted operating in Vietnam .

- ◆ **Extension the right of autonomy in organisation of management and activities of foreign invested enterprises** by eliminating unnecessary intervention of State authorities into normal operations of enterprises, bringing about a legal uniformity on organisation and management of domestic enterprises and foreign invested enterprises in conformity with provisions of the Law on Enterprise as well as international practices. Accordingly, the Law restricts the applicability of the principle of unanimity in organisation and operation of joint venture enterprises, broadens the right of investors in making their own choice of investment forms and re-organising of enterprises, removing requirements of imposed nature on the assignment of capital, on raising funds and termination of operation of foreign invested enterprises, concretely providing procedures on liquidation and bankruptcy of enterprises, particularly methods of realising the value of the land use right for capital contribution by Vietnamese parties on case of liquidation and bankruptcy.

The Amendment Law to the Foreign Investment Law has kept its provision on the foreign invested enterprises not allowed to reduce its legal capital during the course of its operation. However, The Government Decree has opened up a stipulation allowing investment issuing agencies to consider restructuring the capital investment and the legal capital of the enterprise dependent on the circumstances of the concrete realisation of the project on the basis of guarantee the ratio of the legal capital according to the stipulations of the Laws.

To create the favourable conditions for activities of the foreign invested enterprises, Decree 24/2000/ND-CP has a provision allowing the foreign invested enterprises to open their branches or their representative offices overseas. The branches and representative offices of the foreign invested enterprises shall be eligible to carry out the transactions, marketing, distributing products overseas and not to operate under the nature of manufacturing branches. The Decree has clearly provided that the incomes of branches overseas must be annually remitted to the mother companies in Vietnam and be taxable income.

- ◆ **Provision on measures of guarantee of the legitimate interests of enterprises and investors in case of legal changes.** This provision had been supplemented to the Foreign Investment Law since 1992 and further improved during process of legislative making and improvement on foreign investment in Vietnam. From Decree No 12/CP to Decree 10/1998/ND-CP, several important measures of investment guarantee have been stipulated as damage compensation, tax

exemption and reduction etc. in which the most importance is non-retroactive principle provided in Decree No 10/1998/ND-CP. The Amendment Law to the Foreign Investment Law of June 2000 and the Decree has furnished and upgraded the legal efficiency to ensure the legitimate rights of enterprises and investors in case of legal changes, that is, where any new provisions of laws and regulations causes damage to the benefits of foreign invested enterprises such changes shall not apply to projects to which investment licenses have been issued and the Laws on foreign investment or the State shall appropriately resolved by measurer such as changing the business objectives of the project, tax exemption and reduction etc. Simultaneously, allowing investors and enterprises to enjoy more preferential provisions after the investment licence issuance.

- ◆ **Allowing application of security and guarantee measures to significant investment projects and flexibly regulating the application of foreign laws in accordance with international practices.** Deriving from the practical requirements in resolving BOT and special important infrastructure projects, the Amendment Law to the Foreign Investment Law permits the Government to sign an agreement with foreign investors or issue measures on the investment guarantee.

Besides, the Amendment Law of 2000 permits that in case where the Law of Vietnam has not yet provided stipulations then parties may agree in the contract the application of foreign law if the application is not inconsistent with basic principles of the Law of Vietnam.

3. Referring to the investment procedures and state administration

Since the enactment of the Foreign Investment Law in 1996 several significant steps in improving the investment procedures has been in place, moving from the regime of only one investment license issuing body – Ministry of Planning and Investment to the regime of delegation to the provincial people committees and authorisation to Management Boards of Industrial Zones. Besides the appraisal procedures for investment licensing, initial stipulations on the registration procedure for investment licensing was first time set forth in Decree No 10/1998/ND-CP. The registration procedure is also stipulated in the Amendment Law on Foreign Investment Law of June, 2000. Accordingly, the Decree 24/2000/ND-CP concretely stipulates types of projects to be registered for investment issuance under group B, in conformity with approved master plan and are not under the list of projects required to have reports on environment impact assessment and other specific conditions on export ratio, scope of project etc. In general, projects under the registration type of investment licensing are projects of simple and being clearly classified in master plan of development with high ratio of export and small-size with the investment under US\$5 million. The investors of this type of projects when submitting the registration form shall be guaranteed that the investment license shall be granted. The Decree also provides for the components of the application file for registration for investment license issuance which are more simplified in comparison with the application file for appraisal for investment license.

The Decree 24/2000/ND-CP and the Circular 12/2000/TT-BKH provide the detailed guideline on the project document for each type of the project, on the appraisal procedures set forth to group-A projects that the investment license issued by the Ministry of Planning and Investment and the delegation and authorisation in investment licensing to the provincial people committees and the management boards of industrial zones. The investment appraisal and licensing time is cut short to the time provided by the Amendment Law. Particularly, the Circular 12/2000/TT-BKH detailed stipulates the procedures on the amendment of the investment license and relating administrative procedures on separate and split, merge and incorporate of the foreign invested enterprises. In general, the provisions of the investment procedures form the project formation, appraisal to the implementing has been uniformly expressed the concept of seriously improvement of administrative procedures in the foreign direct investment toward simplification, transparency, strengthening the initiative of the investors and reducing the unnecessary intervention of the State. Several issues such as the capital assignment, opening of the branch etc. Has been moved to the registering regime.

Referring to the State management, on the basis of inheriting provisions on the State management in foreign investment activities of Decree 12/CP, Decree 10/1998/ND-CP, Directive 11/1999CT-TTg and Decision 53/1999/QD-TTg, the Amendment Law, the Decree 24/2000/ND-CP accordingly the Circular 12/2000/TT-BKH have provided new stipulations on the State management to the direction as follows:

- ◆ Concretely providing the responsibilities and power of ministries, branches and local authorities, the co-ordinating and reporting mechanism among the investment licensing bodies and among relevant ministries and branches in the implementation of State management functions on FDI activities.
- ◆ Stipulating the power of the evaluation of investment project, issuance of investment license by Ministry of Planning and Investment and
- ◆ Clearly identifying the objectives, power, procedures and co-ordinating mechanism among relevant ministries and branches provincial people committees and the management boards of industrial zones in inspecting and examining activities of foreign invested enterprises.

With the significant and positive changes of the Law on Foreign Investment in Vietnam, hopefully the foreign direct investment in Vietnam shall gain new and bigger developments in the years to come.

I would like to wish the Seminar a success
Thank you for listening